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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6973 OF 2007

Janardan Laxman Sonawale ... Petitioner

V/s

Institute for Design of Electrical Measuring Instruments ... Respondent

Mr. P.M.Mokashi for the petitioner.

Mr. V.P.Vaidya for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 26TH SEPT., 2007.

P.C.:

1. The petition challenges the order of the Industrial Tribunal passed under Section 33(2)(b) of the Industrial Disputes Act, 1947. The learned counsel for the petitioner has raised two main objections in respect of the impugned order. The first contention is that there has been short payment of wages under Section 33(2)(b) of the Industrial Disputes Act. According to the learned advocate, the petitioner has been paid less than one month’s wages which is the condition stipulated in the proviso to Section 33(2)(b) before approval can be granted. He submits that, admittedly, only basic wages

have been paid to the petitioner as disclosed from the order of dismissal dated June 4, 1996. The learned advocate, however, candidly admits that this issue was not raised on behalf of the petitioner before the Tribunal and, therefore, the Tribunal had no occasion to consider the same. However, he submits that when an application under Section 33(2)(b) is being decided, the Tribunal must consider all aspects of the matter including whether wages for one month have been paid as stipulated in the proviso to the Section 33(2)(b) before granting approval. The learned advocate further submits that the Tribunal has not framed proper issues while deciding the reference.

2. A perusal of the order of the Tribunal passed in Application (IT) No. 16 of 1996 discloses utter non-application of mind by the Tribunal. Issues which are not relevant for the purposes of deciding the application have not been framed. It is well settled that an application under Section 33(2)(b) is to be decided in the same manner as a reference under Section 10(1)(d) of the Industrial Disputes Act. Therefore, it was incumbent on the Tribunal to frame proper issues in the matter before reaching any conclusion. The Tribunal ought to have framed the following preliminary issues :-

(i) Whether the conditions stipulated in the proviso to Section 33(2)(b) have been complied simultaneously, as a part of the same transaction ?

(ii) Whether the enquiry instituted against the workman was fair and proper ?

(iii) Whether the findings of the enquiry officer are perverse ?

In the event the first issue is answered in the negative, the subsequent issues need not be answered. If the answer to the first issue is in the affirmative, the Tribunal must consider whether the enquiry has been conducted in a fair and proper manner, procedurally. In the event the Tribunal had concluded that the enquiry held against the petitioner was not conducted in a procedurally fair and proper manner, the Tribunal ought to have permitted the employer to lead evidence to prove the misconduct. This is because in the present case, the employer has sought such a permission. Had the Tribunal answered the second issue in the affirmative, the Tribunal ought to have then proceeded to consider whether the findings of the enquiry officer were perverse. If the Tribunal had concluded that the

findings were perverse, it was necessary then for the Tribunal to pass such an order and to disclose the same to the parties. Thereafter the Tribunal ought to have considered whether the punishment imposed on the workman was justified. In the event the Tribunal had held that the findings were perverse, it was necessary for the Tribunal to permit the employer to lead evidence to prove the charge. The Tribunal has completely erred while allowing the application without framing proper issues and without considering whether the provisions of Section 33(2)(b) have been complied with.

3. In the result, the order of the Tribunal is set aside.

4. The Tribunal shall consider the approval application in the light of the observations aforesaid. The Tribunal shall frame proper issues before considering the application. The application is of the year 1996. It is expected that the Tribunal will hear and dispose of the application as expeditiously as possible.

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